

NO. 09CV0786

PATRICK AND LYNDIA MICHAELSKI § IN THE DISTRICT COURT OF
VS. § GALVESTON COUNTY, TEXAS
JOHN AND PEGGY WRIGHT § 122 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY INJUNCTION ORDER

TO THE HONORABLE COURT:

COME NOW PATRICK and LYNDIA MICHAELSKI, hereinafter called Plaintiffs, complaining of JOHN and PEGGY WRIGHT, hereinafter referred to as Defendants, and for cause of action would respectfully show unto the Court and Jury as follows:

I. Discovery-Control Plan

This case seeks damages of more than \$50,000 and pursuant to Rule 190.1 Tex.R.Civ.P., discovery will be conducted under Level 2.

II. Parties

Plaintiffs are resident citizens of Clear Lake Shores, Galveston County, Texas.

The Defendants, JOHN and PEGGY WRIGHT, are resident citizens Clear Lake Shores, Galveston County, Texas, and may be served with citation at 2391 Marina View Way, League City, Texas, Texas 77573.

III. Venue

Venue is proper in Galveston County, Texas.

IV. Facts

Some months ago, Defendants began the construction of a home at 111 Pine Street, directly behind and adjacent to Plaintiffs' home located at 1019 North Shore Drive, Clear Lake Shores,

Galveston County, Texas. The Defendants raised the level of their lots so that the top of the bottom floor of their home being constructed was 8.2 feet, which is 1.57 feet higher than the top of the bottom floor of Plaintiffs' home. This difference in heights has caused a severe adverse flooding impact to Plaintiffs' property and is in violation of the Drainage Requirements of the City of Clear Lake Shores, Texas, as well as the Common Law of the State of Texas. The Defendants have failed to provide drainage facilities on and along the common property line with the Plaintiffs that would capture drainage now flowing unabated from Defendants' elevated lots onto Plaintiffs' property and redirect such drainage water away from Plaintiffs' property. Because of Defendants' failure to install and utilize adequate drainage facilities, the Plaintiffs' home has been flooded and severely damaged on two (2) recent occasions, April 18 and April 24, 2009, by rain water flowing from and off Defendants' elevated lots and onto and into Plaintiffs' property.

V.

The two recent floodings of Plaintiffs' property, caused by Defendants' diversion of water from their property onto Plaintiffs' property, has caused Plaintiffs to suffer monetary damages, yet to be calculated, but far in excess of the jurisdictional limits of this Court.

VI.

Plaintiffs ask the Court to set their application for a temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants, requiring them to construct and maintain adequate drainage facilities on their property so as to eliminate the drainage problems Defendants have created that have so adversely impacted and damaged Plaintiffs' property. Without an injunction as herein requested, Plaintiff will suffer irreparable injury to their real and personal property, irrespective of their remedy at law. Further, the Plaintiffs are entitled to an injunction under the principles of equity and the statutes and ordinances of the State of Texas and the City of Clear Lake Shores. Tex.Civ.Prac.&Rem. Code § 65.011(1)(3)(5).

VII.

Because Defendants have wrongfully diverted water from their property as above alleged, that has invaded and flooded onto and into Plaintiffs' property, it is probable that Plaintiff will recover damages to their property, both real and personal, from Defendants on final hearing.

VIII.

Without the relief sought hereby and herein being granted, Plaintiffs would show that their property is and will be exposed to future flooding that will cause them irreparable injury and harm to their real and personal property.

IX.

Plaintiffs are willing and able to post bond.

X.

Plaintiffs ask the Court to set this case for trial on the merits and, after trial, issue a permanent injunction against Defendants, enjoining them to construct and maintain adequate drainage facilities on their property so as to eliminate the drainage problems Defendants have created that have damaged Plaintiffs and that Plaintiffs be awarded their damages against Defendants.

PRAYER

For these reasons, Plaintiffs ask that Defendants be cited to appear and answer and, on trial, that Plaintiffs be awarded a judgment against Defendants for the following:

- a. Temporary injunction.
- b. Permanent injunction.
- c. Actual damages.
- d. Prejudgment and postjudgment interest.
- e. Court costs.
- f. All other relief to which Plaintiffs are entitled.

PLAINTIFFS DEMAND TRIAL BY JURY

Respectfully submitted,

LAW OFFICE OF RICHARD MORRISON, P.C.

BY: 

RICHARD MORRISON

Bar Number 14528000

1100 Hwy. 146, Suite A
Kemah, Texas 77565
281/535-0455
281/535-0458 - FAX

ATTORNEY FOR PLAINTIFFS

**THE DISTRICT COURTS OF GALVESTON COUNTY
CIVIL CASE INFORMATION STATEMENT**

The Case Information Statement is for administrative purposes only. It shall be filed with the Parties Original Pleadings and shall be served upon all other parties to the action.

STYLE: _____

COURT NO. 122CASE NO. 09CV0786

FILED BY: _____

Plaintiff

Defendant

Other

Name of Primary Attorney filing this form

Name of Opposing Attorney, if known

Bar No. _____

Bar No. _____

Address

Address

City _____ State _____ Zip _____

City _____ State _____ Zip _____

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Phone No. _____

Fax No. _____

Phone No. _____

Fax No. _____

Briefly describe the case, including special characteristics that may warrant extended discovery or accelerated disposition. If discovery **LEVEL 3** is requested, explain why. Attached additional sheets, if necessary.

Estimated time for discovery: _____

Estimated Trial Time: _____

Do you presently anticipate adding any parties? _____

When? _____

Level Assignment Preferred:LEVEL 1 _____
\$50,000 or lessLEVEL 2 _____
All Other CasesLEVEL 3 _____
Court Order Only

Is this case suitable for ADR? _____

ADR Method: _____

Signature of Attorney _____

Date _____

Printed Name of Attorney: _____

All Status Conferences will be set for Thursday following 90 days from the date of filing.
YOUR STATUS CONFERENCE IS SET AS FOLLOWS:

10 TH District Court	10:00 a.m. _____
56 th District Court	9:30 a.m. _____
122 nd District Court	9:30 a.m. <u>8-20-09</u>
212 th District Court	9:00 a.m. _____
405 th District Court	9:30 a.m. _____

7/11 CITATION

THE STATE OF TEXAS
CAUSE NO. 09CV0786-122ND

PATRICK AND LYNDA MICHAELSKI
VS.
JOHN AND PEGGY WRIGHT

11-06-12-01
11:30
Served

TO: JOHN WRIGHT
2391 MARINA VIEW WAY
LEAGUE CITY, TEXAS 77573

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days from the date you were served this citation and ORIGINAL petition, a default judgment may be taken against you. Said written answer may be filed by mailing same to: District Clerk's Office, 600 59TH Street, Ste 4001, Galveston, TX 77551-2388. The case is presently pending before the 122ND Judicial District Court of Galveston County sitting in Galveston, Texas, and the ORIGINAL petition was filed on the 22ND day of MAY, 2009. It bears cause number 09CV0786 and the parties to the suit are: PATRICK AND LYNDA MICHAELSKI, Plaintiffs JOHN AND PEGGY WRIGHT, Defendants.

The name and address of the plaintiff or the attorney of record is:

RICHARD MORRISON, ATTORNEY
LAW OFFICE OF RICHARD MORRISON, P.C.
1100 HWY. 146, SUITE A
KEMAH, TEXAS 77565

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's ORIGINAL petition and made a part hereof. If this citation is not served, it shall be returned unserved. Issued and given under my hand and the seal of said court at Galveston, Texas, this the 26TH day of May, A.D., 2009

ATTEST:
LATONIA D. WILSON, DISTRICT CLERK
District Court, Galveston County, Texas
By Karen Johnson, Deputy
KAREN JOHNSON

NOTE:

STATUS CONFERENCE SET 8-20-09 at 9:30 A.M.
SEE ATTACHED FORM

OFFICER'S OR AUTHORIZED & DISINTERESTED PERSON'S RETURN

Came to hand on _____ day of _____, 20____ at _____ o'clock _____ and executed in _____ County, Texas by delivering to the within named defendant JOHN WRIGHT, in person or by registered or certified mail, return receipt requested, a true copy of this Citation, with the date of delivery endorsed thereon, together with the accompanying true and correct copy of the Plaintiff's ORIGINAL petition, at the following times and places, to-wit:

NAME	Date	Time of Service	Place

Fees - Serving _____
Amount \$ _____ Name of Officer or Authorized & Disinterested Person _____ County, Texas

By _____
Signature of Deputy or Authorized & Disinterested Person

Authorized & Disinterested Person's Verification:

On this day personally appeared _____, known to me to be the person whose signature appears on the foregoing return. After being duly sworn by me, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

Sworn to and subscribed before me, on this _____ day of _____, 20____.

Notary's Name Printed: _____

Notary Public In and for the State of Texas
Commission Expires: _____